89-1597

Supreme Court, U.S.
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No. ___

In The

Supreme Court of the United States

October Term, 1989

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP. LTD.

Petitioner,

vs.

I.T.T. GENERAL CORPORATION
AND
ELECTRONICS CORP. OF AMERICA

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOHN J. O'BRIEN, JR., ESQUIRE*
JOHN J. O'BRIEN, III, ESQUIRE
1260 One Penn Center at
Suburban Station
1617 J.F.K. Blvd.
Philadelphia, PA 19103
(215) 567-7381

*Member of the Bar of the Supreme Court of the United States

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. May a Federal court ignore the explicit standard of a State intermediate appellate court when The Federal Court's previous opinions direct that "the decisions of the state's intermediate appellate courts are to be given proper regard . . . "? *Erie Castings Co. vs. Grinding Supply, Inc.*, 736 F2d 99 (1984); *Erie Railroad Co. vs. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINION IN THE COURT BELOW

The Order of the U.S. Court of Appeals for the Third Circuit is reproduced as Appendix A. The opinion of the United States District Court for the Eastern District of Pennsylvania are reproduced as Appendix B.

JURISDICTION

The Order of the United States Court of Appeals for the Third Circuit was entered on December 21, 1989. A Petition for Rehearing en banc was denied on January 17,

1990. (Appendix C). This petition was filed within ninety days of that date, the Court has jurisdiction to review the judgment of the Court of Appeals under 28 U.S.C. §1254(1).

FEDERAL CASE INVOLVED

Erie Railroad Company vs. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed 1188 (1938)

STATEMENT OF THE CASE

Briefly, Stanley Masztak instituted an action against Louis Nardello in Philadelphia Court of Common Pleas December Term, 1971 No. 2204. Louis Nardello Inc. had been engaged to service an oil burning heating unit which exploded and allegedly injured Mr. Masztak.

Consequently, General Accident was ordered to indemnify Nardello and as the real party in interest, General Accident filed the present action against I.T.T. General Corporation and Electric Corporation of America (see F.R.C.P. 17; *Ledford vs. Central Medical Parition*, 90 F.R.D. 445 (W.D. Pa. 1981).

There appears never to have been any contractual relationship between Nardello and I.T.T. or Nardello and Electronics Corporation. (see *Svetz vs. Land Tool Co.*, 513 A2d 403.)

The District Court concluded that because contribution and indemnity actions are contractual in nature the

four year statute of limitations applied and General Accident's action was time barred.

The panel affirmed the District Court's decision on December 21, 1989. The panel denied a petition for reconsideration on January 17, 1990.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The District Court's ruling that the statute of limitations period for contribution and indemnity actions is four not six years is a disregard for the Pennsylvania Superior Court decision of *Gabriel vs. O'Hara*, 534 A2d 488 (Pa. Super 1987) which explicitly states that a cause of action without a specific limitations period is governed by the six year "catch all" limitation period.

Further by ignoring the case of *Gabriel vs. O'Hara*, the District Court and now the panel has violated the principle that a Federal tribunal must give the decisions of state intermediate appellate courts "proper regard". See *Erie Castings Co. vs. Grinding Supply Inc.*, 736 F2d 99 (3rd Cir. 1984); *McGowan vs. University of Scranton*, 759 F2d 287 (3rd Cir 1985); *Wilson vs. Asten-Hill Manufacturing Co.*, 791 F2d 30 (3rd Cir. 1986); *A.J. Cunningham Packing vs. Congress Financial Corp.*, 792 F2d 330 (3rd Cir. 1986).

1. CONTRIBUTION IS AN EQUITABLE FAULT SHARING MECHANISM AND IS NOT A CONTRACTUAL CAUSE OF ACTION

In *Mattia vs. Sears, Roebuck & Co.*, 531 A2d 789 (Pa. Super 1987), the Superior Court explained the concept of Contribution:

"At common law, there was no right of contribution between joint tortfeasors, See *Leflar,* Contribution and Indemnity Tortfeasors, 81 U.Pa.L.Rev 130 (1932). Even if two parties were equally responsible for the plaintiff's injury, one could be held liable for the entire loss while the other went scot free. Id. This inequitable result was universally criticized and eventually was changed via statute. See Prosser, Law of Torts 306-07 (4th ed. 1971); Uniform Contribution Among Tortfeasors Acts, 42 Pa. C.S.A. §§ 8321-27.

In Pennsylvania, the statute provides for a right of contribution among joint tortfeasors. 42 PA. C.S.A. §8324(a). Joint tortfeasors are defined as "two or more persons jointly or severally liable for an injury if their conduct "cause a single harm which cannot be apportioned . . . even though [the actors] may have acted independently." *Capone vs. Donovan,* 332 Pa. Super 185, 189, 480 A2d 1249, 1251 (1984)." 531 A2d at 791

The Court on to State:

"[1] Under the Act, joint tortfeasors are entitled to contribution if they have paid more than their pro rate share of this common liability. 42 Pa. S.C.A. § 8324(b). Contribution is obtainable even if the two defendants are held liable based upon different theories of recovery. *Svetz for Svetz vs. Land Tool Co.,* 533 Pa. Super 230, 238, 513 A2d 403, 407 (1986); *Rabatin vs. Columbus Lines, Inc.,* 790 F2d 22, 25 (3d Cir. 1986).

In *Svetz,* a trustee ad litem sued in strict liability for damages arising from a fatal motorcycle accident on behalf of a decedent, alleging that a defective helmet had caused the death.

> The defendant-manufacturer joined as an additional defendant, the tavernkeeper who allegedly served alcohol to the decedent prior to the accident, seeking contribution based upon negligence. The trial court dismissed the complaint for contribution, ruling that such a claim does not lie if the theory of recovery differs from the underlying theory of the case. The Superior court reversed, holding that a defendant held liable based upon strict liability may be entitled to contribution from a negligent third party. The court stated that "the doctrine of contribution is based on equity. Therefore, the Act must be examined with equity in mind" Svetz, 355 Pa. Super. at 237, 513 A2d at 407. The court then stated: "It matters not on which theory a tortfeasor has been held responsible for the tort committed against the plaintiff. So long as the party seeking contribution has paid in excess of his or her share of liability, it would be inequitable under the Act to deny that party's right to contribution from a second tortfeasor who also contributed to the plaintiff's injury." Id. at 238, 513 A2d at 407. 531 A2d at 791
>
> [2] Thus, the equitable obligation of contribution may be asserted where: (1) the parties combined to produce the plaintiff's injury; (2) the parties are each liable in tort to the plaintiff; and (3) a tortfeasor has discharged the common liability by paying more than his pro rate share . . . " 531 A2d 791

Nowhere in the *Mattia* case is contribution called a contractual cause of action. Also, the *Svetz* case (cited in *Mattia*) showed that contribution does not arise from contractual relations. In *Svetz* a helmet manufacturer and bar were never in a contractual relationship. *Svetz vs. Land Tool Co.*, 513 A2d 403 (Pa. Super 1986).

The *Svetz* Court quoted the case of *Puller vs. Puller,* 110 A2d 175 (Pa. 1955) by stating:

> "The Supreme Court observed that 'contribution is not a recovery for the tort [committed against the plaintiff] but the enforcement of an equitable duty to share liability for the wrong done' . . . " 513 A2d at 407

So if Contribution is an equitable principle what is its statute of limitations period? The case of *Gabriel vs. O'Hara,* 534 A2d 488 (Pa. Super 1987) should answer that question, but first what is indemnity?

2. INDEMNITY IS A FAULT SHIFTING MECHANISM AND NOT A CONTRACTUAL CAUSE OF ACTION

In *Sirianni vs. Nugent Bros. Inc.,* 506 A2d 868 (Pa. 1986), the Pennsylvania Supreme Court described indemnity in the following manner:

> "As the Superior Court correctly noted, the concept of common law indemnity in Pennsylvania was summarized by this Court in the case of *Builders Supply Co. vs. McCabe,* 366 Pa. 322, 77 A.2d 368 (1951). There this court, speaking through Mr. Justice Horace Stern, described the right of indemnity thusly:
>
> > The right of *indemnity* rests upon a difference between the primary and the secondary liability of two persons each of whom is made responsible by the law to an injured party. It is a right which enures to a person who, without active fault of his own part, has been compelled, by reason of some legal obligation, to pay damages occasioned by the initial negligence of another, and for

> which he himself is only secondarily liable . . .
>
> Id at 325, 77 A.2d at 370 (emphasis in original).

Although some legal commentators have suggested that the need for common law indemnity has dissipated with the modern day acceptance of the theories of comparative negligence and contribution, Prosser and Keaton of Torts p. 344 (5th Ed. 1984); in Pennsylvania our legislature has specifically decided that the acceptance of contribution "does not impair any right of indemnity under existing law". 42 Pa.C.S. §8323. Thus, the law of *Builders Supply* remains viable today. However, the adoption of those modern day fault sharing mechanisms can aid in fully understanding what this Court meant in *Builders Supply*.

In further explaining the right of indemnity, the Court said:

> [The difference between primary and secondary liability] depends on a difference in the character or *kind* of the wrongs which cause the injury and in the nature of the legal obligation owed by each of the wrongdoers to the injured person.
>
> . . . .
>
> [S]econdary as distinguished from primary liability rests upon a fault that is imputed or constructive only, being based on some legal relation between the parties, or arising from some positive rule of common or statutory law or because of a failure to discover or correct a defect or remedy a dangerous condition caused by the act of the one primarily responsible.
>
> Id at 326, 328, 77 A2d at 370, 371 (emphasis in original). See also *Burbage vs. Boiler*

Engineering & Supply Co., 433 Pa. 319, 249 A2d 563 (1969)." 506 A2d at 870-871

The Supreme Court went on to state:

> "Thus, unlike comparative negligence and contribution, the common law right of indemnity is not a fault sharing mechanism between one who was predominantly responsible for an accident and one whose negligence was relatively minor. Rather, it is a fault shifting mechanism, operable only when a defendant who has been held liable to a plaintiff solely by operation of law, seeks to recover his loss from a defendant who was actually responsible for the accident which occasioned the loss . . . " 506 A2d at 871

If Indemnity is not specifically a contractual cause of action, then what is its statute of limitations period? This can best be answered in *Gabriel vs. O'Hara*, 534 A2d 488 (Pa. Super 1987).

3. *GABRIEL VS. O'HARA* AND THE "CATCH ALL" SIX YEAR STATUTE OF LIMITATIONS PERIOD

Gabriel vs. O'Hara, supra, involved the sale of a residential property on or about August 29, 1980. The plaintiffs later learned of substantial defects and filed an action on August 25, 1982. Later on July 28, 1986, the plaintiffs filed a petition for leave to amend their complaint for violation of the Unfair Trade Practices and Consumer Protection Law (UTPCPL) (73 P.S. §201 et seq). The petition was denied and the plaintiffs appealed.

Because the action involved a sale, allegations of fraud and a consumer contractual relationship the Court could have found that the six year limitation period did not apply.

The *Gabriel* court noted that the legislature "failed to include a statute of repose for either actions for damages or injunctive relief under section 201-9.2" of UTPCPL (534 A2d at 493 Col 1).

The *Gabriel* court ruled that the six year limitation applied:

> "As we previously noted, the Unfair Trade Practices and Consumer Protection Law embraces actionable conduct which sounds in assumpsit as well as trespass and which parallel actions upon contracts as well as those arising in tort. We are unable, therefore, to characterize all the multifarious claims that may be brought under the UTPCPL as "fraud" or "deceit." Instead, the UTPCPL creates a civil action which is separate and distinct from appellants' other causes of action and for which the legislature provided no limitations period. The language of section 5527(6) of the Judicial Code, however, is clear and unambiguous as to what period of limitation shall apply in such instances: "Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation [must be commenced within six years]." 42 P.C.S. § 5527 (6) (emphasis added). Since section 201-9.2 of the UTPCPL provides for a civil action which is not subject to a limitations period, the Unfair Trade Practices and Consumer Protection Law is subject to the six-year "catch all" statute of limitations. We find further support for our determination in the decisions of the courts of other states which have concluded likewise." 534 A2d at 495

It should be noted that contribution and indemnity actions may involve either contract or tort issues; that the Uniform Contribution among Tortfeasors Act 42 Pa.

C.S.A. §8321-27 does not have a specific statute of limitations period; that neither contribution nor indemnity are specifically given a limitations period of two or four years and finally cases such as *Pa. National Mutual Insurance vs. Nicholson*, 542 A2d 123 (Pa. Super 1988); *Frangos vs. Doering Equipment Corp.*, 860 F2d 70 (3rd Cir. 1988) and *Thermo King Corp. vs. Strick Corp.*, 467 F. Supp 77 (W.D. Pa. 1979) have lead many to believe that the statute of limitations for contribution and indemnity is six years.

Using the *Gabriel* standard it would appear that the statute of limitation *is* six years for contribution and indemnity actions.

There has been no explicit change in the law reducing contribution and indemnity actions from six years to four years limitations period in fact, in *Nicholson* the Superior Court stated:

> "Because a contribution action is not specifically named within a particular limitations statute, the applicable statute of limitations is §5527. See 42 Pa. C.S.A. §5527. Accordingly, in an action for contribution, the applicable limitation period is six years commencing from the entry of judgment against the joint tortfeasors . . . " 542 A2d at 126

The court *never* qualified this statement by declaring that it applies only to actions before 1982.

The *Frangos* court also declared that the statute of limitations for indemnity is six years and cited *Thermo King*. (see 860 F2d at 75 n 6).

CONCLUSION

One of the defense briefs admitted that there was no explicit case law declaring that the statute of limitations for contribution and indemnity is six years. Rather the defendant claimed that the law *implys* that these actions are subject to a four year limitations.

Nicholson explicitly states that the limitations period is six years, but this case was rejected by the District Court because it arose before a 1982 change in the law and by implication the period is now four years even though the *Nicholson* court does not make such a declaration.

The limitations statutes specifically name causes of action (i.e. fraud) and those not *specifically* named fall under the "catch all" six year limitations. This interpretation was followed in the *Gabriel* case.

The statute of limitations for Contribution and Indemnity is six years until explicitly changed as in the case with fraud and deceit (see 42 Pa. C.S.A. 5524, 1978 and 1982; *A.J. Cunningham Packing vs. Congress Financial Corp.*, 792 F2d 330 (3rd Cir. 1986)).

In the case of *Boyle vs. United Technologies Corp.*, 487 U.S. ___, 101 L.Ed.2d 442, 108 S.Ct. ___ (1988) Justice Brennan in his dissent discussed the standard of *Erie R. Co. vs. Thompkins*, 304 U.S. 64, 82 L.Ed. 1188, 58 S.Ct. 817 (1938):

> Thus, Erie was deeply rooted in notions of Federalism, and is most seriously implicated when, as here, federal judges displace the state law that would ordinarily govern with their own rules of federal common law . . . 101 L. Ed.2d at 461

In the present action a District Court Judge found that the Statute of Limitations had been reduced from six to four years. Yet the Pennsylvania Superior Court in *Pa. Nat. Mutual Ins. vs. Nicholson,* 542 A2d 123 (Pa. Super 1988) did not make such a pronouncement. In fact if the standard found in *Gabriel vs. O'Hara,* 534 A2d 488 (Pa. Super 1987) was followed, the Court would have been compelled to deny the defendant's motion for summary judgment.

In *McKenna vs. Ortho Pharmaceutical Corp.,* 622 F2d 657 (3rd Cir. 1980) the Court stated in footnote 14:

> "14 *Commissioner vs. Estate of Bosch,* 387 U.S. 456, 465, 87 S. Ct. 1776, 1783, 18 L.Ed2d 886 (1965) "If there be no decision by that Court then federal authorities must apply what they find to be the state law after giving 'proper regard' to relevant rulings of other courts of the state." *Id* The *Erie* court expressly intended that federal courts were to be governed by the law of each state whether it "be declared by its legislature or by its highest court in a decision . . . " 622 F2d at 661 footnote 14

The *McKenna* Court further stated:

> "A diversity litigant should not be drawn to the federal forum by the prospect of a more favorable outcome that he could expect in the state courts. But neither should he be penalized for his choice of the federal court by being deprived of the flexibility that a state court could reasonably be expected to show . . . " 622 F.2d at 663.

In the present case, if the District Court Judge had followed the clear standard in *Gabriel vs. O'Hara,* 534 A2d 488 (Pa. Super 1987) "predicting" Pennsylvania law should not have been a problem.

Because it is clear that the District Court Judge may not have followed U.S. Supreme Court Standards, the plaintiff requests the petition for a Writ of Certiorari should be granted and the decision of the U.S. District Court and the Court of Appeals should be reversed.

Respectfully submitted,

/s/ JOHN J. O'BRIEN, JR., ESQUIRE
JOHN J. O'BRIEN, III, ESQUIRE
1260 One Penn Center
Philadelphia, Pa. 19103
(215) 567-7381

Dated: April 9, 1990

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 89-1596

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP. LTD.,

Appellant

v.

I.T.T. GENERAL CORPORATION and
ELECTRONICS CORPORATION OF AMERICA

Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil No. 88-6505
District Judge: Honorable James McGirr Kelly

Submitted Under Third Circuit Rule 12(6)
December 11, 1989

Before: HUTCHINSON, COWEN, and ROSENN,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

/s/ Max Rosenn
Circuit Judge

Attest:

/s/ Sally Mrvos
Sally Mrvos, Clerk

Dated: DEC 21 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP., LTD.	:	CIVIL ACTION
v.	:	
I.T.T. GENERAL CORPORATION and ELECTRONICS CORP. OF AMERICA	:	NO. 88-6505

MEMORANDUM AND ORDER

J. M. KELLY, J. JUNE 30, 1989

Presently before the court is the motion of defendant I.T.T. General Controls Division (ITT), referred to as ITT General Corporation in plaintiff's complaint, for summary judgment in favor of defendants and against plaintiff General Accident Fire & Life Assurance Corp., Ltd. (General Accident). Defendant Electronics Corp. of America (ECA) has filed a motion for judgment on the pleadings or, in the alternative, for summary judgment. Each defendant has responded to the other's motion in support of the averments and arguments set forth in the motions. The court concludes that ITT's motion for summary judgment in favor of both defendants shall be granted. Both defendants are entitled to judgment as a matter of law on the ground that plaintiff's claim is barred by the applicable statute of limitations.

BACKGROUND

There is no genuine issue as to the following material facts. In 1969, Stanley Masztak was allegedly injured by

an explosion of an oil burner heating unit, and subsequently instituted an action in Philadelphia Common Pleas Court against six defendants, including Louis Nardello Co., Inc. (Nardello), based on that injury. On June 16, 1983, judgment was entered in favor of Masztak and against Nardello in the amount of $399,479.17.[1]

Nardello initiated an action against General Accident in 1981, seeking a declaration of its rights and General Accident's obligations, regarding the Masztak litigation, under an insurance policy between Nardello and General Accident. Summary judgment was entered in favor of Nardello and against General Accident in the declaratory judgment action on April 7, 1983. General Accident was required to indemnify Nardello for the amount recovered by Masztak, and for costs, counsel fees and interest. General Accident paid Nardello the amount of $630,142.21 on October 2, 1987, after an unsuccessful appeal of the trial court's summary judgment order.

General Accident seeks to recover the amount of $630,142.21 from ITT and ECA. In its complaint, General Accident alleges that the oil burner heating unit which exploded and injured Masztak contained components which were manufactured by ITT and ECA, that these components were defectively designed, and that the defective components caused the explosion which injured Masztak. General Accident also alleges that negligence of ITT and ECA caused the explosion and injury.

---

[1] Masztak and Nardello subsequently entered into a settlement agreement, pursuant to which Nardello made installment payments on the judgment amount from October 7, 1983 until October 8, 1987.

DISCUSSION

ITT, in its motion for summary judgment in favor of both defendants, contends that General Accident's claim against the defendants is barred by the applicable statute of limitations. ITT contends that General Accident's claim is properly characterized as a claim of subrogation to the rights of its insured, Nardello. ITT further contends that Nardello's claim against ITT and ECA is a claim for contribution, based on the theory that ITT and ECA were joint tortfeasors, or for indemnity. ITT contends that the underlying claim of Nardello for contribution or indemnity accrued when judgment was entered against Nardello, on June 16, 1983. Accordingly, because General Accident filed its complaint on August 23, 1988, over five years after the underlying claim accrued, General Accident's claim is barred pursuant to either the two year or four year Pennsylvania statute of limitations.

In response, General Accident contends that the statute of limitations applicable to its subrogated claim for contribution or indemnity is six years, and that such a claim accrues only when the party seeking contribution has paid the entire judgment or more than its pro rata share. Additionally, General Accident contends that it has an independent claim for indemnity, to recover its payment to Nardello of counsel fees Nardello incurred in defending Masztak's claim, and that this claim for indemnity did not accrue until General Accident's payment to Nardello.

I conclude that General Accident has no independent right of indemnity or contribution against ITT or ECA. Indemnity principles do not apply between an insurer,

General Accident, and unrelated alleged tortfeasors such as ITT and ECA. *See David Jeffrey, Ltd. v. Jewelers Mutual Insurance Co.*, No. 86-6222, slip op. (E.D. Pa. Aug. 29, 1987), 1987 U.S. Dist. LEXIS 8072, 4-5. The insurer's rights are established by the right of subrogation to the rights of the insured. *Id.* In this action the insured, Nardello, would have the right to recover attorney's fees expended in defense of the Masztak claim, as indemnitee, even where those costs have been paid by the insurer, General Accident. *See Boiler Engineer and Supply Co. v. General Controls, Inc.*, 443 Pa. 44, 277 A.2d 812 (1971).

Similarly, General Accident has no independent right of contribution against ITT or ECA. General Accident and the two defendants cannot be considered joint tortfeasors, a prerequisite to the assertion of a claim for contribution, because General Accident and the two defendants have not acted together in causing the loss of the original plaintiff, Masztak, nor have their independent acts united to cause such a loss. Contribution is a right enjoyed by a joint tortfeasor, and since General Accident is not a joint tortfeasor, it has no such independent right. *See Jeffrey*, 1987 U.S. Dist. LEXIS 8072 at 3-4.

General Accident's subrogated claim for indemnity or contribution is an assertion of the right of Nardello, its insured, against the alleged tortfeasors ITT and ECA. Therefore, General Accident is subject to whatever defenses ITT and ECA have against Nardello. *See id.* at 5-6. ITT contends that the applicable statute of limitations bars General Accident's claim. I conclude that the statute of limitations which governs General Accident's action is the four year statute applicable to contracts implied in law. 42 Pa. Cons. Stat. Ann. § 5525(4) (Purdon 1981).

An action for contribution or indemnity is most properly characterized as an action based on a contract implied by law. *See Svetz v. Land Tool Co.*, 355 Pa. Super. 230, 238, 513 A.2d 403, 407 (1986) (contribution is enforcement of equitable duty), *appeals denied*, 515 Pa. 581, 527 A.2d 542, 515 Pa. 584, 527 A.2d 544 (1987); *Thermo King Corp. v. Strick Corp.*, 467 F. Supp. 75, 77 (W.D. Pa.) (due to contractual nature, indemnity claim governed by statute of limitations applicable to contracts), *aff'd*, 609 F.2d 503 (3d Cir. 1979). In *Pennsylvania National Mutual Casualty Insurance Co. v. Nicholson Construction Co.*, 374 Pa. Super. 13, 542 A.2d 123, *appeal denied*, 555 A.2d 116 (1988), the court noted that an action for contribution "sounds in contract rather than tort law." *Id.* at 18, 542 A.2d at 125.[2]

General Accident concedes that an action for contribution is contractual in nature. Moreover, General Accident states in its memorandum of law that:

> an action for contribution is 'held to be governed by the statute of limitations applicable to actions based on implied contracts since, for purposes of limitations, the action may be regarded as one for the debt not evidenced by

---

[2] In *Nicholson*, the court ruled that the six year statute of limitations governed the claim for contribution presented in that case. The action in *Nicholson* had accrued in 1977, however, prior to the effective date of the amendment to 42 Pa. Cons. Stat. Ann. § 5525 which established a four year statute of limitations period for actions based on contracts implied in law. Moreover, in *Nicholson* the parties conceded that the six year statute of limitations applied, and almost eight years had passed between the accrual of the cause of action and the date the complaint was filed. *See Nicholson*, 374 Pa. Super. at 19-20, 542 A.2d at 126.

> writing, or as one to recover, upon an implied promise, money paid for the defendant's benefit.'

Memorandum of Law in Support of Plaintiff's Answer to Motion for Summary Judgment at 7 (citation omitted).

The date on which General Accident's claim for contribution or indemnity accrued is the date on which the underlying claim of its insured, Nardello, accrued. A claim for contribution or indemnity accrues, and the statute of limitations begins to run on such a claim, when a judgment is entered in favor of the plaintiff in the original action. *See Nicholson*, 374 Pa. Super. at 19, 542 A.2d at 126; *Hughes v. Pron*, 286 Pa. Super. 419, 426, 429 A.2d 9, 12 (1981). Judgment was entered in favor of Masztak, the original plaintiff, and against Nardello, on June 16, 1983. The statute of limitations began to run on the claim for contribution or indemnity, therefore, on June 16, 1983.[3]

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[3] General Accident contends that the statute of limitations on an action for contribution does not begin to run until the joint tortfeasor seeking contribution pays more than his pro rata share of the liability. General Accident further contends that the existence of the factual issue of the proper allocation of the pro rata share of the liability between Nardello and the defendants in this action precludes an entry of summary judgment based on the statute of limitations.

These contentions must be rejected. If the statute of limitations does not begin to run on a claim for contribution until the proper allocation of the pro rata shares of the joint tortfeasors is determined, the result would be that the running of the statute would be tolled indefinitely until the actual determination of liability for contribution was made. Postponing the accrual of an action, for statute of limitations purposes, until the determination of the merits of the action is a result not required or justified under Pennsylvania law.

Because the statute of limitations began to run on General Accident's claim for contribution or indemnity on June 16, 1983, and the complaint in this action was filed on August 23, 1988, General Accident's claim is barred by the four year statute of limitations. Accordingly, defendants ITT and ECA are entitled to judgment as a matter of law.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP., LTD.	:	CIVIL ACTION
v.	:	
I.T.T. GENERAL CORPORATION and ELECTRONICS CORP. OF AMERICA	:	NO. 88-6505

ORDER

AND NOW, this 30th day of June, 1989, for the reasons set forth in the foregoing Memorandum, it is ORDERED that:

1. The motion of defendant I.T.T. General Controls Division for summary judgment in favor of defendants is GRANTED.

2. Judgment is ENTERED in favor of defendants, I.T.T. General Controls Division and Electronics Corp. of America, and against plaintiff, General Accident Fire & Life Assurance Corp., Ltd.

3. The motion of defendant Electronics Corporation of America for judgment on the pleadings or in the alternative for summary judgment is DISMISSED as moot.

BY THE COURT:

/s/ James Kelly
JAMES McGIRR KELLY, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 89-1596

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP. LTD.,

Appellant

v.

I.T.T. GENERAL CORPORATION and
ELECTRONICS CORPORATION OF AMERICA

Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil No. 88-6505

Before: HUTCHINSON, COWEN, and ROSENN,
Circuit Judges

ORDER SUR PETITION FOR PANEL REHEARING

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this court and no judge who concurred in the decision having asked for rehearing, the petition for panel rehearing is denied.

By the Court:

/s/ Max Rosenn
Circuit Judge

Dated: JAN 17 1990